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OFFICE OF PETITIONS

In re Application of :
Freyssinet, et al. :
Application No. 09/486,094 :
Filed: July 17, 2000 :
Attorney Docket No. A33002-PCT-USA :
For: GENE CODING FOR ANDROCTONINE, :
VECTOR CONTAINING SAME AND :
TRANSFORMED DISEASE-RESISTANT :
PLANTS OBTAINED :

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed November 17, 2003 (certificate of mailing date November 12, 2003) and supplemented on December 31, 2003 (certificate of mailing date December 29, 2003), to revive the above-identified application.

The above-identified application became abandoned for failure to properly reply to the final Office action of February 11, 2003. Petitioners filed a request for a two month extension of time and required fee and amendment after final on July 15, 2003 (certificate of mailing date July 11, 2003). The amendment after final failed to place the above-identified application in *prima facie* condition for allowance, as was explained in the Advisory action, mailed on October 20, 2003. This application became abandoned on July 12, 2003. A Notice of Abandonment was mailed on November 6, 2003.

Applicants have submitted a reply in the form of a RCE and amendment, an acceptable statement of the unintentional nature of the delay in responding to the February 11, 2003 final Office action, and the petition fee.

The petition under 37 CFR 1.137(b) is **GRANTED**.

Regarding finances, extensions of time under 37 CFR 1.136 are available only if asked for "prior to or with the response." In no case, however, may an applicant respond later than the maximum time period set by statute. Accordingly, if the question of abandonment arises when the provisions of 37 CFR 1.136 can no longer be used, then the application is abandoned when the unextended time for response expired. Therefore, no extension fees are due on a petition for revival. In view thereof, the three month extension of time fee submitted with the petition is unnecessary and will be refunded to petitioners' deposit account as authorized.

After the mailing of this decision the application will be forwarded to Technology Center 1600 for further examination.

Telephone inquiries pertaining to this matter may be directed to the undersigned at (571) 272-3230.

A handwritten signature in black ink, appearing to read "E. Shirene Willis". The signature is written in a cursive, flowing style.

E. Shirene Willis
Senior Petitions Attorney
Office of Petitions